

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ADAM TIJERINA,

Plaintiff,

vs.

NATIONAL DEBT RELIEF, LLC,

Defendant.

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CIVIL ACTION NO: 5:22-cv-00928-XR

JOINT MOTION TO DISMISS WITH PREJUDICE

Plaintiff Adam Tijerina and Defendant National Debt Relief, LLC (the "Parties") file this Joint Motion to Dismiss with Prejudice and respectfully shows as follows:

On August 26, 2022, Plaintiff filed this action against Defendant alleging that Defendant failed to pay Plaintiff time and one-half the regular rate of pay for all hours worked over 40 during each seven-day workweek while working for Defendant. Tijerina was, and is, the sole Plaintiff in this action. Central to the matter, Plaintiff and Defendant have a bona fide dispute regarding Plaintiff's entitlement to pay for certain work allegedly performed by Plaintiff, and if so entitled, the amount of such pay due.

Notwithstanding, Plaintiff and Defendant have carefully and exhaustively negotiated a settlement and have agreed to resolve all alleged disputed issues in this action.

"Ordinarily there [is] no need" for the Court to approve the settlement of a "dispute between employer and employees [because] people may resolve their own affairs, and an accord and satisfaction bars a later suit." *Walton v. United Consumer Club, Inc.*, 786 F.2d 303, 306 (7th Cir. 1986). While some circuits hold otherwise in the FLSA context, mandating court approval of settlements under the Act, the Fifth Circuit held that private settlement agreements between

employer and employee are enforceable even in the absence of court approval, provided the plaintiff knew of his FLSA rights and had legal counsel prior to signing the settlement agreement. *Martin v. Spring Break '83 Prods., LLC*, 688 F.3d 247, 256 n.10 (5th Cir. 2012). Because there was “little danger of employees being disadvantaged by unequal bargaining power” and there was a “bona fide dispute as to liability,” the Fifth Circuit held that a private FLSA settlement under these circumstances was binding and enforceable without court approval. *Id.* at 255-57.

Here, the settlement was achieved in an adversarial context, Plaintiff and Defendant are represented by competent and experienced counsel, and the settlement agreement reflects a reasonable compromise over disputed issues, including a bona fide dispute as to the amount of unpaid hours of overtime worked by Plaintiff. The Parties believe that the settlement reached is a fair and reasonable compromise of the respective positions of both sides. Accordingly, entry of the Proposed Order will “secure the just, speedy and inexpensive determination” of this action. See Fed. R. Civ. P. 1.

Accordingly, Plaintiff and Defendant jointly request that the Court dismiss this case with prejudice.

Respectfully submitted,

/s/ David B. Jordan

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/s/ Josh Sanford (by permission)

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**ATTORNEY FOR PLAINTIFF
ADAM TIJERINA**

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August 2023, a true and correct copy of the foregoing Motion was filed via CM/ECF, and served via the Court's e-filing system, email, and/or United States mail to the individuals listed below:

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ATTORNEY FOR PLAINTIFF

/s/ David B. Jordan

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